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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 EDDIE J. WAGNER,

12 Plaintiff,

13 vs.

14 R. ANTI, LT.; LEAPHART, CPT;  
15 R. DAVIS, LT.; C. MCGUIERE, C/O;  
16 K. THOMAS, C/O; J. RODRIGUEZ, C/O;  
17 J. SPINNEY, MTA; BALTINEZ, R.N.; and  
18 DR. SAND,

19 Defendants.

CASE NO. 06cv2237 LAB (WMC)

**ORDER GRANTING IN PART *EX***  
***PARTE* REQUEST FOR**  
**EXTENSION OF TIME TO SERVE**  
**DEFENDANTS**

20 On June 7, 2007, the Court ordered Plaintiff to serve defendants as required by Fed.  
21 R. Civ. P. 4 within 30 days of the date the Court's order was entered. On July 2, 2007,  
22 summonses were issued as to all Defendants. Also on July 2, Plaintiff filed a motion  
23 purporting to be a noticed motion with a hearing date of July 1, 2007, in which he requests  
24 an additional 45 days in which to serve Defendants. The Court construes this as an *ex parte*  
25 application for extension of time (the "Application"). Although the Application refers to "the  
26 papers, records, and attached declaration of plaintiff, also by this reference made a part of  
27 this motion," the Application consisted of a two-page notice with no attachments other than  
28 a proof of service.

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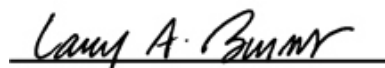
1 Plaintiff states he forwarded copies of the summons to the Clerk, but does not state  
2 when he did so. Therefore, the Court has no basis on which to conclude Plaintiff was  
3 diligent in attempting to obtain the summonses. Plaintiff points out he "is an incarcerated  
4 inmate and must process all procedures by United States Postal Service." The Court was  
5 aware of these facts at the time the June 7, 2007 order was issued and took them into  
6 account in setting the time limit. Although Plaintiff also knew these facts, he waited until near  
7 the expiration of the time limit in which to request an extension of time. The Court has  
8 previously admonished Plaintiff he must fulfill his responsibilities promptly and has warned  
9 him of the possibility of dismissal. Therefore, the Court finds Plaintiff has not shown good  
10 cause for an extension of time in which to serve Defendants as ordered.

11 The wording of Plaintiff's request suggests that perhaps, instead of an extension of  
12 time in which to serve Defendants, he was requesting an extension of time in which to file  
13 proof of service. The Court's order of June 7, 2007 did not set a particular time for filing  
14 proof of service of process. Other than the 120-day limit set in Fed. R. Civ. P. 4(m), which  
15 Plaintiff has already exceeded, no particular time limit is set within which to file proof of  
16 service. If Plaintiff misunderstood the Court's order and believed he was being ordered to  
17 file proof of service within 30 days of June 7, his request for an extension of time was  
18 unnecessary.

19 Plaintiff is hereby **ORDERED** to file proof of service promptly as to all Defendants, as  
20 provided under Fed. R. Civ. P. 4(l), showing that Plaintiff has complied with the Court's order  
21 of June 7, 2007. The affidavit must specify the date service was accomplished on each  
22 Defendant. **If Plaintiff fails to file all proofs of service as ordered no later than July 30,**  
23 **2007, the complaint may be dismissed pursuant to Fed. R. Civ. P. 4(m) without further**  
24 **notice to Plaintiff.**

25 **IT IS SO ORDERED.**

26 DATED: July 10, 2007

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28 **HONORABLE LARRY ALAN BURNS**  
United States District Judge